

## **REMARKS**

This responds to the office action issued on October 27, 2010. Reconsideration is respectfully requested in view of the following remarks.

### ***Claim Rejections – 35 U.S.C. § 103***

#### **Independent Claims 25 and 33**

Independent claims 25 and 33 are rejected under 35 U.S.C. §103 over the combination of Schmidt (U.S. 6,522,894), Kanevsky (U.S. 2003/0002688) and Yoo (U.S. 2004/0185919). These rejections are respectfully traversed.

Independent claim 25 recites a “safe volume profile providing a default volume setting...selected to reduce the risk of damage to a user’s hearing if the mobile device is operated in close proximity to the user’s ear while in the handsfree mode of operation.” A similar limitation is included in independent claim 33. Claims 25 and 33 further specify that the handsfree mode of operation is for use while holding the mobile device away from the user’s ear and that the safe volume profile is used in order to protect the hearing of the mobile device user in case the mobile device is still held in close proximity to the user’s ear when the mobile device transitions from the handset mode of operation to the handsfree mode of operation. The Applicant submits that nothing similar to this is disclosed or suggested by the cited references, either alone or in combination.

The Office Action acknowledges that the combination of the cited references fail to disclose each of the elements recited in claims 25 and 33. For instance, with respect to claim 25 the Office Action acknowledges that none of the cited references disclose “a safe volume profile... associated with the handsfree mode of operation.” Nonetheless, the Office Action concludes that it would have been obvious for the person of skill in the art to modify the cited references “so as to merely protect the listener’s hearing while listening to the audio sound according to such hands-free mode.” (See,

Office Action, pages 5 and 10). Significantly, the Office Action provides no evidence and no reasoned explanation why the person of ordinary skill in the art would purportedly modify the cited references to protect the listener's hearing while in a hands-free mode even though none of the cited references make any suggestion to do so. The Patent Office, having the burden of proof on the issue of obviousness, must base its obviousness rejection on evidence and must support its decision with articulated reasoning. (See, MPEP 2142; see also, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S.Ct. 1727, 1741 (2007) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Circ 2006)). Accordingly, the office action's cursory rejection of claims 25 and 33 is clearly improper and must be withdrawn.

Further, a proper rejection under §103 could not be made because it would not be obvious to a person skilled in the art, based on the teachings of the cited references, to associate a safe volume profile with a handsfree mode of operation. This is because none of the cited references describe a situation in which "the mobile device is still held in close proximity to the user's ear when the mobile device transitions from the handset mode of operation to the handsfree mode of operation," as recited in claims 25 and 33.

The Schmidt reference, relied upon by the Office Action, describes a wireless communication device that can operate either in a regular "phone mode" or in a "radio mode." In radio mode, the phone appears to handle communications in a half-duplex manner such that voice data is only transmitted when the user pushes a button (i.e., push-to-talk mode.) The Schmidt reference explains that the default setting is for the audio output to be through a loud speaker in radio mode and through a quieter speaker in phone mode. However, the Schmidt reference does not suggest a quieter "safe volume" setting for the radio mode. This is because the Schmidt reference

never contemplates switching between its phone mode and its radio mode during the middle of a call, and thus is not concerned with a situation where the phone is still held in close proximity to the user's ear when transitioning between modes. Moreover, in Schmidt's preferred embodiment, as shown in Fig. 1, the loudspeaker (85) for the radio mode is opposite the portion of the phone held adjacent the ear, making it even more unnecessary to utilize a "safe volume profile" in Schmidt's device. Accordingly, the person skilled in the art would have no reason to modify the Schmidt reference based on the teachings of Kanevsky, Yoo, or any other reference, to provide a safe volume profile, as recited in independent claims 25 and 33.

For at least these reasons, the Applicant respectfully submits that independent claims 25 and 33, along with their respective dependent claims, are patentable over the cited references and in condition for allowance.

#### **Independent Claim 41**

Independent claim 41 is rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Schmidt (U.S. 6,522,894), Kanevsky (U.S. 2003/0002688), and Haas (U.S. 5,862,236). This rejection is respectfully traversed.

In claim 41, similar to claims 25 and 33, when the mobile device is initially switched to handsfree mode, the mobile device initially limits the volume to a preset initial level. After the volume has been initiated at the preset initial level, the user can raise the volume to a level higher than the preset initial level. Claim 41 further specifies that the volume is initially limited when the mobile device is switched from the handset mode to the handsfree mode and that the reason for this is to protect the hearing of the mobile device user in case the mobile device is still held in close proximity to the user's ear when the mobile device transitions from the handset mode to the handsfree mode.

Among other distinctions, the combination of the cited references fail to teach or suggest initially limiting the volume to a preset initial level when the mobile device is manually switched from the handset mode to the handsfree mode. As explained above, the cited Schmidt reference describes a communication device that may be manually switched between a phone mode and a radio mode. However, there is no suggestion in Schmidt that this might be done while holding the radio mode loudspeaker adjacent the user's ear, causing a danger of hearing loss. Accordingly, there would be no reason for the person skilled in the art to combine the volume limits described in the Kanevsky reference with Schmidt to provide a preset initial volume level when the device is switched between modes.


For at least these reasons, the Applicant respectfully submits that independent claims 41, along with its dependent claims, are patentable over the cited references and in condition for allowance.

### *Conclusion*

For at least the above reasons, the Applicant respectfully submits that the pending claims are patentable over the cited references and are in condition for allowance.

Respectfully submitted,

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